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A Legal Research Monograph
On

"The Doctrine of Caveat Emptor and the Consumer Rights in Bangladesh"

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DECLARATION

I hereby declare that I composed this thesis entirely myself and it describes my own research and this thesis has not been previously submitted for a degree or diploma at any other higher educational institutions. To the best of knowledge and belief the thesis contains no material previously published or written by another person except where due reference is made.

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APPROVAL FROM THE SUPERVISOR

This is to certify that the legal research monograph "The Doctrine of Caveat Emptor and the Consumer Rights in Bangladesh" is a bona fide record has been done by Mohammad Habibul Alam, as the partial fulfillment of the requirement. LL.M program of the department of Law, Sonargaon University Bangladesh.

.....
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DEDICATED TO

This thesis is dedicated
To

My parents, Wife,
Sisters and my Honorable
Teacher.

ACKNOWLEDGEMENT

Firstly, I would like to thank Almighty Allah for giving me a large opportunity and ability to prepare this research paper successfully. With his shower of blessings. I've completed this research paper with all the necessary information.

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Finally, I'd like sincere thanks to my beloved family members for offering consistent support in many ways and will always be remembered and deeply appreciated to me.

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LIST OF ABBREVIATION

CDRA-Consumer Disputes Redressal Agencies

CDRF-Consumer Disputes Redressal Forum

UK-United Kingdom

USA-United State of America

CDRC-Consumer Disputes Redressal Commission

NCDRC-National Consumer Disputes Redressal Commission

ICC-International Chamber of Commerce

CU-Consumer Union

DG- Directorate General

CAB-Consumer Association of Bangladesh

GATT-General Agreement on Tariffs and Trade

WHO- World Health Organization

DCIC-District Consumer Information Centre

UT-Union Territory

ABSTRACT

Caveat emptor is a Latin term meaning "let the customer watch" like the phrase "sold as is" this term implies that the customer assumes the danger that a product could fail to fulfill expectations or have defects. In other words, the principle of caveat emptor serves as a warning that buyers have no recourse with the seller if the product does not meet their expectations. Caveat emptor was the rule for many purchases and land sales before the commercial Revolution, though sellers assume for more responsibility for the integrity of their product within the gift day. Individuals consumed so much fewer products and frequently from native sources before the eighteenth Century, leading to only a few client protection laws (mostly restricted to weights and measures).

"Product Liability: Background for additional historical data regarding the principle of principle. In the market nowadays buyers does not have much safety because of bod companies who provide fake exchanges so to prevent buyers from that kind of forgery the committee started educating the society about buyer behavior but still there are many problems occurs even today in the market which tends to say that the awareness is not that effective still, hence the null hypothesis of this study is been fulfilled

Consumer rights protection is the practice of protecting buyers of goods and services, as well as the general public, from discriminatory business practices. Consumer protection methods are often recognized by lave. Such loves are envisioned to preclude businesses from engaging in fraud or specified discriminating rehearses in order to gain an advantage over competitors or to mislead consumers. Consumer protection is related to the concept of consumer rights and the creation of consumer associations, which assist consumers in making better market decisions and pursuing business grievances. In Bangladesh, consumer protection line is described as a body of law that governs private law relationships between individuals and the businesses that sell them goods and services.

Consumers in Bangladesh are severely underserved in terms of their rights. As a result, safeguarding consumer rights in Bangladesh is critical, as consumer demands and preferences have shifted as a result of globalization and increased awareness. This study looks at the process of consumer protection in Bangladesh and investigates the various consumer protection acts and laws in the country, as well as the gap between law and reality in this area. It also outlines the different steps that can be taken to educate customers about their rights and policies. Furthermore, this study suggests that government agencies and other bodies work hard to implement some mechanism to raise consumer consciousness about the Consumer Protection Act as a right and to assist them in avoiding being victims of many of society's evils

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CHAPTER ONE

INTRODUCTORY CHAPTER

1.1 Introduction

The Consumer product safety laws have originated and developed as a natural response to the recognition of the rights of every consumer to be protected against exploitation and abuse by any manufacturer or supplier of goods or service providers. The idea of consumer protection can be found to have existed in every kind of social order and judicial mechanism, whether primitive or modern. However, the extent to which it has been emphasized and seeks to be flourished has varied depending upon the variations in circumstances. This reality draws support not only from customary norms of buying and seeking services but also from many religious ordainments and commands of kings. The protection of consumers has, therefore, been a continuous process with different dimensions, more often than not, slow and compromising. The major developments on maintenance of product safety standards are occurred in the U.K and U.S.A.

1.2 Aim and objective:

The purpose of this study is that in the days when buying and selling was carried on in the local marketplace, the rule was a practical one. Buyer and seller knew each other and were on equal footing. The nature of modem commerce and technology placed the buyer at a disadvantage, however, so a stack of regulations have been written by federal, state, and local agencies to protect the consumer against dangerous or defective products, fraudulent practices, and the like. But the principle that a buyer needs a warranty if he is to avoid risk remains an important legal concept.

1.3 Statement of the Problem

So the doctrine attempts to make the buyer more conscious of his choices. It is the duty of the buyer to check the quality and the usefulness of the product he is purchasing. If the product turns out to be defective or does not live up to its potential the seller will not be responsible for this. Section 16 of the Sale of Goods Act 1930 incorporates the principle of caveat emptor which reads as- "Subject to the provisions of this act or any other law for the time being in force there is no implied condition or warranty as to quality or fitness for any particular purpose of goods supplied."

1.4 Research Methodology:

During this paper the researcher will follow doctrinal research method as doctrinal research asks what the law is on a particular issue. This type of research is also known as pure. Also content analysis of available secondary data.

1.5 Research Question:

1. What is caveat emptor? How it changed to caveat venditor?

2. What are the rights of a vendor? What are Consumer Disputes Redressal Agencies?

3. What are the specific Exceptions to the Doctrine of Caveat Emptor

4. Available like this question--While selling mangoes to A, the seller B did not mention that these mangoes will not ripen. This meant A could not make ice cream for his restaurant the next day. Is the seller at fault?

1.6 Fundamental Concepts

Three-Tier Radical System: The Consumer Protection Act, 1986 has granted certain rights for the protection of consumers" interests. This heavy burden has been allotted to the Consumer Dispute Redressal Agencies formed through the Act. These agencies have been further categorized under three different tiers:

1. Consumer Dispute Redressal Forum, i.e., District Forum.

2. Consumer Dispute Redressal Commission, i.e., State Commission.

3. National Consumer Dispute Redressal Commission

CHAPTER TWO

PRIMARY CONCEPT OF CAVEAT EMPTOR

2.1 Introduction

The rule of caveat emptor which means "let the buyer beware" has been overridden by the rule of caveat venditor. Such change was required because of changing conditions of modern trade and commerce. The phrase caveat emptor is not used by the judges very often nowadays. This doctrine is based on the principle that when a buyer is satisfied as to the product's suitability, then he is left with no subsequent right to reject such product. The caveat emptor rule originated many years ago in common law and over the times has undergone major changes. The exceptions of the doctrine started expanding with time as it was being given a concrete shape.

2.2 Definition of Caveat Emptor

Caveat emptor is a Latin phrase that is translated as "let the buyer beware." The phrase describes the concept in contract law that places the burden of due diligence on the buyer of a good or service. Caveat emptor is a fundamental principle in commerce and contractual relationships between a buyer and a seller.

1. Section 16 of the Act No. III of 1930, makes minor amendments in the Act were made by Sale of Goods Act(Amendment) Act, 1963 and it came into force on 26 March, 1971

2 https://www.toppr.com/guides/business-laws/the-sale-of-goods-act-1930/doctrine-of-caveat-emptor

2.2.1 According to the caveat emptor principle,

A buyer is responsible for performing the necessary due diligence before the purchase to ensure that a good is not defective and that it suits his/her needs. If the buyer falls to perform the necessary actions, he or she will not be entitled to any remedies for damages in case the purchased product shows significant defects.

The doctrine of Caveat Emptor is an integral part of the Sale of goods Act. It translates to "let the buyer beware". This means it lays the responsibility of their choice on the buyer themselves.

It is specifically defined in section 16 of the act "there is no implied warranty or condition as to the quality or the fitness for any particular purpose of goods supplied under such a contract of sale"

A seller makes his goods available in the open market. The buyer previews all his options and then accordingly makes his choice. Now let's assume that the product turns out to be defective or of inferior quality.

This doctrine says that the seller will not be responsible for this. The buyer himself is responsible for the choice he made.

So the doctrine attempts to make the buyer more conscious of his choices. It is the duty of the buyer to check the quality and the usefulness of the product he is purchasing. If the product turns out to be defective or does not live up to its potential the seller will not be responsible for this.

3. https://www.toppr.com/guides/business-laws/the-sale-of-goods-act-1930/doctrine-of-caveat-emptor

2.2.2 Let's see an example.

A bought a horse from B. A wanted to enter the horse in a race. Turns out the horse was not capable of running a race on account of being lame. But A did not inform B of his intentions So B will not be responsible for the defects of the horse. The Doctrine of Caveat Emptor will apply. However, the buyer can shift the responsibility to the seller if the three following conditions are fulfilled.

- if the buyer shares with the seller his purpose for the purchase
- the buyer relies on the knowledge and/or technical expertise of the seller
- And the seller sells such goods.

2.3 The History of Caveat emptor

In the 19th century, the attitude of common law towards the buyer can be understood by the maxim Caveat emptor which means let the buyer beware. This maxim explains that a purchaser must carefully examine and judge what is best for him. The purchaser should not take the risk of the condition and quality of the object which he needs to buy, he must protect himself by a warranty. The philosophy behind the rule of Caveat emptor basically was that buyer shall apply his own skill and judgment before buying. It is based on the fundamental principle that when a buyer is satisfied with the suitability of the product for his use, no subsequent right will be left with him to reject the same. When the rule of caveat emptor originated, it was quite rigid and there was no scope for any subsequent change in the rule. In English Sale of Goods Act, 1893, it is highly noticeable and evident that the seller's duties as to requirements of disclosure when a product is sold was minimal. There was no duty upon the seller to provide information and proper examination of the goods by the buyer was considered over and above any other duty. The Concepts which could be used to shift the burden as to quality and fitness on the seller such as "fitness of goods' and 'merchantability", were not encouraged. Another strong statement which was present in Section 11(1) (c) in the said Act, which mandated that the buyer could not reject the goods on any ground in cases where there was sale of 'specific goods. Thus, it is highly noticeable that the law was bent towards the seller and in those times, one could not even find a corresponding rule which would put the burden on the seller.

4. Gaoray Tiwari-Business Law (25-Dcember-2018)-Topper Publisher
5. https://www.toppr.com/guides/business-laws/the-sale-of-goods-act-1930/doctrine-of-caveat-craptor

2.3.1 Early history of caveat emptor

The attitude of common law in the 19th century towards the buyer may be summed up by the maxim caveat-emptor (let the buyer beware). This maxim summarizes the rule that a purchaser must examine and judge what is best for him. The purchaser takes risk of quality and condition unless he protects himself by a warranty or there has been false representation. It applies, with certain specific restrictions, not only to the quality but also the title of the thing, which is sold. The maxim caveat emptor is based upon the presumption that the buyer is relying on his own skill and judgment, when he makes a purchase. I It means that subject to the implied conditions and the exceptions created thereby, the seller is not bound to supply goods which should be fit for any particular purpose or which should possess any particular quality. It is buyers' duty to select the goods of his requirement. The buyer, therefore, had every opportunity to satisfy himself as to the quality of the goods or their fitness for a particular purpose, and at common law it was presumed that where the buyer could examine the goods even though he did not do so, he relied upon his own skill and judgment.

2.4 The Fallacy & the Need for Change

At the time of its origin the rule of Caveat emptor prevailed in its absolute form but it was later categorized as detrimental to the development of commerce and trade. Rule of Caveat emptor in its absolute form was highly detrimental to the buyer because of the absence of the element of reasonable examination. Therefore a buyer would have no recourse against the seller who is aware of the latent defect but did not aware the buyer about the same and the buyer cannot detect that defect (as it cannot be detected by reasonable examination).

Another strong reason for the fallacy of the rule of Caveat emptor is the need for providing protection to the buyer who purchases the goods in good faith, that is, where the buyer purchases goods from the seller by relying on his skill and judgment. Thus the rule was subsequently diluted so as to give proper recognition to the relationship between the seller and the buyer and in order to give rise to a scenario wherein commercial transactions are encouraged.

6. https://www.mondaq.com/?
7. Walton H. Hamilton, the ancient maxim caveat emptor, 40 Yale L..J. (1931).

2.5 Scope of Caveat Emptor

In Ward v. Hobbes (1878) 4 AC 13, the House of Lords held that if a seller uses artifice or disguise to conceal the defects in the product which is to be sold, it would amount to fraud on the buyer; still no duty to disclose the defects in the product is imposed on the seller by the doctrine of caveat emptor. An obligation to use care and skill while purchasing goods is imposed on the buyer by the doctrine of Caveat emptor.

The Court of Appeal Wallis v. Russel (1902) 2 IR 585, explained the scope of caveat emptor and laid down that the rule of Caveat emptor implies that "the buyer must take care". It applies to the purchase of those things upon which buyer can exercise his own skill and judgment, e.g. a picture, book, etc. (also known as specific goods); it also applies in the cases where by usage or by a term of contract it is implied that the buyer shall not rely on the skill and judgment of the seller.

2.6 How it changed to caveat venditor?

The caveat emptor principle, that literally means let the buyer beware, has been followed for many years by the Courts of England. These simple words were an easy focus for judicial thought, a principle to be invoked when the going is difficult, and a guide to be followed amid the baffling uncertainties of litigation. Emptor in Latin is the buyer and the verb caver is a verb of caution: caveat emptor was the perfect principle for transactions involving not massive quantity of goods.

The principle of caveat emptor was the guideline for the courts and the point was that the buyer had the chance to use his knowledge to be careful or accept the cost of his inattention. No warranties were implied to assure the quality of the goods he was going to buy and only a seller making a false statement could be sued in tort for deceit. In such a case he was not simply assuming a fact but giving a clear warranty to the buyer he could be sued even though he did not know about the falseness of his affirmation.

8. Abdul Malek, Anju Man Ara Begum, Kazi Arshadul Hoque, and Doctrine of "Caveat Emptor" (Buyer be aware) in
Common Law and the Doctrine of "Khiyar al aib" (Option of defect) in Islamic Law: A Comparative Study, ISSN 1813-7733 Vol.10 & 11, December 2014

9. https://blog.ipleaders.in/doctrine-of-caveat-empt

10. Mane rakhir, modern law college, isan no 2341

CHAPTER THREE

THE EXCEPTIONS TO THE RULE OF CAVEAT EMPTOR

3.1 Exceptions to the Rule of Caveat emptor (Section 16)

3.1.1 Fitness for buyers purpose [Section 16(1)]

Section 16(1) of the said Act provides that in situations where the seller is aware either expressly or by necessary implication of the purpose for which a buyer needs to purchase a specific product, further, the goods are of such description which the seller supply in his ordinary course of business and by relying upon the judgment and skill of the seller, the buyer purchases that product, then the goods should be in accordance with the purpose. In other words, this section explains the circumstances where the seller has an obligation to supply the goods to the buyer as per the purpose for which he intends to buy the goods.

3.1.1(1) Requirements of Section 16(1) are as follows:-

- The buyer should explain the particular purpose for which he is making the purchase to the seller.
- The buyer should rely on the seller's skill and judgment while making purchase.
- The goods must be of a description which the seller in his ordinary course of business supply.

3.1.2 Sale under Trade Name [Proviso to S. 16(1)]

In some cases, a buyer purchases goods not by relying on the skill and judgment of the seller but by relying on the product's trade name. In such cases, it would be unfair that the seller is burdened with the responsibility of quality. The proviso to Section 16 deals with such cases. It provides that:

"Provided that, there is no implied condition as to fitness for any particular purpose in the case of a contract for the sale of a specified product under its patent or other trade names.

11. Verma ayush, Ipleader, 26-february-2020
12. https://blog.ipleaders.in/doctrine-of-caveat-emptor

3.1.3 Merchantable quality [Section 16(2)]

The second most important exception to the rule of Caveat emptor is incorporated by Section 16(2) of the Act. The Section imposes a duty upon the dealer to deliver the goods of merchantable quality.

Section 16(2) states that there is an implied condition that when goods are purchased by description from a seller who deals in the goods of that description, the goods shall be of merchantable quality.

3.1.3(1) Meaning of Merchantable Quality: It implies that when the goods are purchased for resale, the goods must be capable enough of passing in the market under the name by which they are sold.

3.1.3(2) Merchantable qualities depends on the following two factors:-

(a) Marketability- Merchantability does not mean that the goods are saleable just because the goods look all right, but they shall be marketable at their full value. "Mereltuntability does not mean that the goods are saleable even if it has defects which makes it unfit for its proper use but is not noticeable on ordinary examination.

(b) Reasonable fitness for general purposes "Merchantable quality" means, that if goods are purchased for self-use, they must be fit for the purpose for which they are generally used. Example: A person bought a hot-water bottle which is generally used for the application of heat. The bottle burst to scald the person's wife. The seller was held to be liable.

3.1.4 Examination by buyer [Section 16(2)]

The provision to S. 16(2) provides that "if upon examination of the goods to be purchased, the defects ought to have been revealed, and then no implied condition as regards to the defect will exist." The requirement provided in the proviso would be considered as satisfied fully when the buyer was given full opportunity to examine the goods and the argument that the buyer did not use that opportunity will not make any difference, an existence of opportunity is sufficient in such cases.

3.1.5 Conditions implied by trade usage [Sec. 16(3)]

Section 16(3) gives statutory force to the conditions implied by the usage of a particular trade.
It states:

"An implied condition or warranty as to the quality or fitness for any particularpurpose may be annexed by the usage of trade."

In the case of Peter Darlington Partners Ltd v Gosh Co Ltd, a contract for the sale of canary seeds was subjected to the custom of trade and held that if there exist any impurities in the seeds the buyer will get a rebate on the price but he would not reject the goods. However, a custom which is unreasonable will not affect the parties contract.

3.1.6 Express Terms [Section 16(4)|

It is open to the parties to include any express conditions or warranties in their contract. But an express warranty or condition does not negative a warranty or condition implied by the Act unless the express terms are inconsistent with the implied conditions. Thus, where sleepers supplied to a railway company were required to be approved by its experts, it was held that it did not exclude the implied condition of merchnatableness.

3.2 Consent by fraud

It happens when the seller knowingly conceals the defects which could not be discovered by the buyer with the reasonable application of skill and judgment at the time of purchase. The consent is obtained by fraud and, hence, the seller cannot charge the buyer for his negligence to examine.

13. hupe/blog (pleaders.in/doctrine E-caveat-compton
14. https://t.me/joinchat/J-0YrBa4IBSHdpuTfQO_sA

CHAPTER FOUR

Marketing And Advertising Are Ethical

4.1 Concept of Marketing Ethics

Marketing ethics are the moral principles and values that need to be followed during any kind of marketing communication. They are the general set of guidelines which can help companies to decide on their new marketing strategies. But then it depends on one's own judgment of 'right' and 'wrong''. Any unethical behavior is not necessarily illegal. If a company is making any kind of claims about their products, and are unable to live up to those claims, it may be called as an unethical behavior.

Marketing is fundamentally an ethically sound activity insofar as it aims to find and present ways of satisfying people's needs and wishes and thus of expanding their freedom and contributing to their personal and social fulfillment.

This centrality of the consumer, however, which gives a positive ethical tone to marketing as a function of business, also alerts us to his or her vulnerability in a relationship that is asymmetrical and unbalanced in favor of the supplier's information and other resources

4.2 Concept of Advertising Ethics

Thus ethics in advertising means a set of well-defined principles which govern the ways of communication taking place between the seller and the buyer. Ethics is the most important feature of the advertising industry. Though there are many benefits of advertising but then there are some points which don't match the ethical norms of advertising

An ethical ad is the one which doesn't lie, doesn't make fake or false claims and is in the limit of decency.

15. https://www.business-standard.com/article/specials/huyer-beware-are-markorting-and-advertising-always-ethical-197010301012_1.html
16. BSCL, Business Standard, (27-january-2013)

4.3 Production and pricing

The fundamental concern to respect individuals and their interests generates ethical conclusions regarding the various aspects of marketing. Thus, market research should not only exemplify respect for honesty, accuracy and objectivity in dealing with people but should also have regard for their unique individuality, neither imposing on them nor invading their physical and psychic privacy.

Again, the process of acquiring corporate intelligence should desirably not have recourse to deceitful approaches or false interviews or to hiring away employees of other companies in order to gain access to their corporate secrets.

Product management should routinely take account of safety factors, including health warnings and tamper-proof and child-proof packaging. It should be careful to provide information about important product qualities, including their contents and ingredients, and to give due and timely notice of any replacements or improved products that are being planned.

Ethical respect for the recipients of business's attentions also affects product differentiation and innovation and will include not only the honesty and genuineness of differences being developed but also the deception involved in reducing the size of a product while keeping its price fixed and various features of packaging, including slack and wasteful packaging

Environmental sensitivity from the cradle to the grave, involving raw materials, production processes and disposal and recycling of products, should mean more from the ethical point of view than sales gimmickry and should honestly reflect the increasing environmental sensitivities and expectations of customers and society at large. Companies wishing to present an ethical profile in their marketing will also take care to provide channels of customer reaction and redress, including prompt product alerts and recalls when necessary.

Many of these ethical conclusions are straightforward enough. But probably one of the most difficult ethical issues in marketing affects the pricing of products and in settling on what should count as a fair price or as a reasonable return on costs.

If the word profiteering has any meaning, it implies that there are ethical limits to what price one can set for a product. The ways in which various sales practices are described clearly presupposes the possibility of overcharging and thus of taking unethical advantage of customers and others.

Predatory pricing to ruin a competitor, collusion in price fixing by members of an industry. objections to price maintenance in such commodities as books and non- prescription medicines, price discrimination in different parts of the market, and price

(Le. exploiting people's needs) all imply by contrast that there is such a thing as a fair price On the other hand, prestige pricing may be a matter of ethical indifference, when luxuries or an elite segment of the market are concerned and individuals may be thought quite capable of looking after themselves in their pursuit of non-necessities.

Perhaps this indicates that a crucial factor in considering the ethics of pricing non-luxuries lies in competition and the possibility of customer choice that it offers. In other words, to suggest that an ethical price for necessities is simply constituted by what people are prepared to pay must depend on what choice is available to them. This may be answered in terms of how great their need is for the product and of whether they have the opportunity to shop around and purchase it at a competitive price.

4.4 Making informed choices

Possibly the area of marketing that is most ethically sensitive in ordinary business activities, at least in the eyes of the public, is that of advertising. As we have already noted, this is fundamentally an ethically sound activity. It is a valuable feature of society and of business in drawing attention to goods and services that are availableto satisfy people's needs, desires and wishes. It expands human freedom by increasing choices; it can inform, stimulate and entertain; and mostly it is legal, decent, honest and truthful, as the International Chamber of Commerce observes.

It also contains an ethical tension which is the basis of most of the moral issues that can arise in advertising. On the one hand the potential customer seeks information in order to make an informed choice. On the other the potential seller seeks to persuade in order to make a sale. The ethical trick may be how to combine sales influence with respect for the individual's freedom of choice and exercise of personal responsibility.

If respect and support for the individual in their freedom of choice is at the heart of ethical advertising, this involves two major conditions about his or her power to exercise choice: that it is adequately informed and that it is unforced and freely exercised.

First, to be informed takes us into the area of knowledge and communication about various goods and services that are on offer. Here there can be no substitute for customer awareness of the true state of affairs about products and the options available. Obviously unethical behavior is found in inducing ignorance or error throughlying, deliberate misrepresentation and serious omission.

However, there are also less obvious problem areas in the matter of providing appropriate information. What counts as appropriate? Total disclosure about a product can raise costs and can also result in information overload that defeats its purpose. Yet concealment, omissions or the withholding of relevant information would materially affect the customer's purchasing decision. Presumably the acid test is whether the aim of an advert is to provide the most useful information to help the consumer make a reasoned choice.

This still begs a question about usefulness, of course, but it is a good question, and one to be kept continually in mind. For example, it can be used to apply particular ethical scrutiny to small print disclaimers, press advertorials, TV infomercials, exaggeration, puffery and generally inflated claims for goods or services as part of an enquiry about whether they help or hinder informed choice.

There is, of course, the old Latin maxim, caveat emptor, or let the buyer beware, to indicate that customers have their own responsibility to be adequately informed and to take obvious precautions, including seeking expert advice, and so on.

There is clearly much point to this observation, which bases ethical considerations on what is sometimes called the reasonable consumer. Such a person might reasonably be considered able to read adverts with a wary eye, aware of possible conventions and harmless exaggeration. Alongside this, however, one has also to take into account the presence of what can be called market illiterates, particularly when the market in particular expensive commodities is increasingly complex, as it is in the case of computers and financial services.

In addition, there may be particular markets or segments, children, for example, which cannot be expected to be sufficiently intelligent to assess information or to have sufficient presence of mind to make sure they are adequately knowledgeable and therefore in a position to make a truly informed choice. This, of course, is why many people have serious ethical reservations about advertising aimed directly or obliquely at children.

4.5 Consumer freedom

Consumer choice that is fully human is the ideal towards which advertising should ethically aim. This means that such choice must be not only informed but also unforced, that is, free from undue pressure. Again, there are areas where what counts as undue pressure is not always obvious.

One may be clear enough about physical coercion or about wearing customers down through sheer exhaustion, as has been alleged of some time-share sales agents. It is also interesting that widespread rejection of subliminal advertising arises from concern that influence is being exercised, literally, below the threshold of people's consciousness, which is thus regarded as an invasion, not now of their physical, but of their psychic privacy.

The same may be said of manipulating people in the sense of getting them to do something without their being aware of it or of why they are doing it. For example, how ethical is it to encourage impulse buying?
Yet there must also be a place for due influence, as in any human interchange. There is thus ethical scope for exercising influence on other people on a rising scale, beginning with straight information and proceeding to suggestion, advocacy and persuasion, before reaching the unethical extreme of manipulation.

Playing on people's feelings and emotions to influence their decisions and choices and to secure their agreement and consent is a normal part of social interaction. After all, we are not computers, to the possible despair of economists, and our choices are not based simply on rational or logical grounds. They are also influenced by our feelings of being attracted or repelled by something on offer, or by a presentation, package or advert highlighting its power to satisfy our various needs.

This is the basis of contending that one is really selling satisfaction and states of mind rather than simply goods or services: well-being, and not just a package holiday or a designer suit; security, and not just insurance or a warranty; even beautiful feet or sexual confidence, and not just shoes or cosmetics.

Problems arise, however, if emotions are being exploited or if impressionable and vulnerable sectors of society are being targeted, such as immature children, despairing sick people and socially insecure ethnic or age groups. In such cases the ethical risk is that what is at work is manipulation rather than persuasion.

Perhaps a clue to this is an absence of the sales resistance and robust skepticism that might normally be expected of consumers. Some critics of advertising methods, however, would go further and fault the whole industry on the grounds that it is in the

Business of arousing dissatisfaction and of creating unnecessary or undesirable needs in people. Yet this seems more an observation about culture than about advertising. For there is a place in human living not simply for satisfying inborn animal needs for food and protection but also for satisfying acquired human needs and tastes that are culture inspired and part of socialization, including needs for a variety of goods and services of a pleasing kind, standard and promise.

A further defense of modem advertising presents it as an expression of art, operating according to recognized conventions of presentation, enjoyment and appreciation, and sometimes indulging itself and its viewers in harmless fun and entertainment.

The point is well made and yet it is also worth bearing in mind that humor has a powerfully disarming effect. Moreover, whatever else it sets out to do there is no doubt that in laying out its wares advertising ought to respect persons, personal priorities, preferences and ethical values. Possibly, too, individuals need to remind themselves regularly that not all our needs. wants, desires and wishes have to be satisfied. There is always room in life for what me American described as the tragedy of the excluded alternative. And certainly there is much scope in schools for critical consumer education.

On a wider canvas there is little doubt, also, that in the explicit and implicit values and views of life and relationships that are portrayed regularly in the fantasy world of advertising (the perfect kitchen, family, body and so on) there is a danger of sending misleading or highly selective signals to its recipients.

4.6 The Decline of Caveat Emptor

To understand the shift in society's expectations of marketing practice and the marketing ethics framework, It is helpful to consider some examples of ethical controversy in marketing. These are not the black-and-white issues of earlier days when firms completely disregarded consumer welfare, often illegally, in the sale of hazardous products (such as a car with a gas tank that explodes in an accident) or through outright deceit or bribery. Today's more complex issues involve shades of gray:

In June 1988, Consumers Union, the leading consumer interest group in the United States, announced that it was classifying the four-wheel-drive Suzuki Samurai as "not acceptable," the first time in ten years a vehicle had received this rating. The widely respected consumer interest group demanded that the 160,000 Samurais already sold be recalled because of the vehicle's alleged propensity to roll over when used on the

Road. The scientific evidence was inconclusive; three months later, the National Highway Traffic Safety Administration decided not to investigate the Samurai. The agency subsequently found greater problems with another four-wheel-drive vehicle, the Ford Bronco II. Meanwhile, Samurai sales plummeted.

While there were various reasons suggested for Consumers Union's targeting of the Samurai, most notably that it was the leading import (Japanese) sport utility vehicle, a better reason explains consumers adverse reaction to the Samurai. Eschewing industry categorization, Suzuki had positioned the Samurai to appeal to buyers of sport utility vehicles, compact trucks, and subcompact cars, rather than any one of these specific categories. "Never a dull moment" was the Samurai's advertising theme. It is fun and value had appealed especially to young, less experienced drivers. At issue was whether consumers understood the product they were buying. According to the owner's manual, "Your vehicle is designed primarily for off- road driving." While all sport utility vehicles differ from passenger cars in their handling characteristics, inevitably their design requires some compromise of highway safety to provide off-road capability. Yet the Samurai was marketed as suitable for highway trips and commuting to work not one of thirteen different television advertisements, aired between the vehicle's launch in 1985 and the start of criticism about its safety in 1988, showed its off- road capability. Suzuki had targeted the car-buying public, suggesting that the vehicle was equivalent to a car and thereby understating it sdifferent handling characteristics.

17. https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1060&cotnext-flr
18. BSCAL, business standard, (27-june-2013)
19. A. stark, what's the matter with business ethics? Harvard business
20. R.C boumhart, how ethical are business? Harvard business review, (july-august, 1961)

CHAPTER FIVE

The Consumer's Badge of Authority

5.1 The Growth of the Doctrine of Implied Warranties

The doctrine of implied warranties is not new in the law. The content of such warranties, however, does change from time to time as adaptations are made to changing business practices. And the current trend is toward expanding rather than curtailing the areas where such implication will be made. At a very early date in the English law it was held that a seller of personal property (as distinguished from real property) impliedly warranted that he had title to the product sold and that he had a right to sell the same. Likewise there also arose the concept of implied warranties of wholesomeness or fitness for human consumption in the case of a sale of food, and conformity to sample where a bulk of goods was sold by sample. Similar doctrines were incorporated into American law, and, with appropriate refinements and extensions into new areas to coincide with changes in trade customs, have prevailed to this day.

Traditionally the doctrine of implied warranties has not been extended to sales of real estate. Various reasons have been assigned to explain this distinction between real and personal property. All of them have something to do with what is believed to be the intention of the parties. The buyer usually makes a careful examination of the real estate he buys and relies upon his own judgment, or else he relies upon the advice of a trusted consultant. The seller did not manufacture the land and usually did not erect the buildings upon it; therefore, he is not in a position to have the same kind of special knowledge of its quality and fitness as could be expected from the grower or manufacturer of a product such as a bushel of potatoes or a suit of clothes. Furthermore, there is a lack of uniform specifications concerning land or buildings; and it is not unusual for a buyer, especially one who is young or of limited financial means, to deliberately look for a somewhat dilapidated house which is within his pricerange and which he can improve with his own hands to the point where it is both more useful to him and capable of bringing a better price when he is ready to sell.

21. Bertel spark, Foundation for economic and education, (01-june-1975)

22. LUDWIG von mises, socialism 21,1. khan transl, 1951

23. https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1324&context-historical_theses

25. Ibid

26. Ibid

5.2 Recent Change

But within the last decade there has developed a trend toward recognition that the nature of the transaction between buyer and seller has so changed that the law must adapt itself to cope with the change. The developer has placed himself more in the position of a manufacturer offering a product of his own making for sale. Under these circumstances, it is more likely that the developer, by his very acts, manifests intent tocreate an impression in the buyer that the house being sold was built in a workmanlike manner and that it is reasonably fit for the purpose for which it is intended, namely, human habitation. It is also likely that the buyer purchased in reliance upon that implied representation. The situation has become an appropriate one for the implication of certain warranties by the seller, and a number of courts have so held.

Such judicial recognition of implied warranties in this area where there were no implied warranties before does not affect nor is it affected by the doctrine of caveat emptor. Rather it is an adaptation of an old principle to a new business condition. It is recognition that as modern vendors of housing move into a market where they are becoming manufacturers, they are tending to place themselves in the same legal position as the manufacturers of other consumer goods. By their acts, they are now making certain kinds of implied promises which housing vendors had not made before, either expressly or by implication. But they are promises actually made and resting upon the actual intent of the parties to the particular transaction.

5.3 Buyer's Choice

Enforcement of such promises is unrelated to the doctrine of caveat emptor which is nothing more than a doctrine that the seller will not be held liable for promises he did not make or purport to make in any manner whatever. He is not required, as a matter of law, to guarantee the goods sold. Neither does the doctrine apply in any instance where the intent to guarantee can be shown either by the words used or by the acts done. If the intention cannot be shown by either of these methods, then caveat emptor, that is to say, let the prospective buyer who is contemplating a purchase of an article examine it, make his own judgment as to its suitability for his purposes, and then let him decide for himself the terms on which he is willing to buy or decline to buy the article.

5.4 Pity the Consumer

The interventionist's lament over the consumer's lack of qualification for making his own decisions is without end. A few years ago consumers were competing with each other to see which one could have the highest fins on his automobile. If a producer expected to sell automobiles, he had to put fins on them. This was interpreted in some circles as an unscrupulous effort by the producers to trick consumers into paying for frills that failed to add anything to the functional qualities of the automobile. Some even suggested that there ought to be a law prohibiting producers from manufacturing and selling automobiles with fins. that is to say, a law to prevent producers from offering the consumer what the consumer wanted.

5.5 Market Effectiveness

It is the contention of the present writer that if the consumer is allowed the freedom of a caveat emptor, open market system, and his control of the productive process will be far more effective than that of any government agency can possibly be. That point will be disputed by the interventionists, and it must be admitted that the overwhelming majority of the American people are interventionists. But majorities can be mistaken even when their claims are most persuasive.

In this instance the interventionists are eager to point out that the manufacturer of an automobile, a box of cereal, or a pair of shoes is likely to be large and powerful while the consumer is likely to be of small means and lacking in influence. They will then tell you that the big and powerful producer is prepared to offer a finished product to the consumer on a take-it-or-leave-it basis, and that the choice of the individual consumer cannot influence the producer.

27. By: Ari Soffer, Senior Content Manager, July 5, 2019

28. https://www.leadspace.com/marketing-effectiveness

29. Ibid

30. Ibid

5.6 To Buy or Not to Buy

Linder the free market, caveat emptor system, the consumer's control of production is absolute. And he has only one way to express his approval or disapproval. That way is by buying or rejecting the products or services being offered to him. If the market is free, his rejection of a product is an invitation to a possible competitor to offer him an alternative which will more closely conform to his personal wishes. And every time the consumer makes a purchase in the free market system, he is casting his ballot for one product and against another. Since the consumer is the best possible judge of what brings satisfaction to him, he is likely to be both better informed and less corruptible when exercising his choices in the market place than he can reasonably be expected to be when he is at the polls casting his vote for a new director of consumer protection.

As for the producer, the only way he can get into the business in the first place is to risk his capital, labor, and abilities in the production of a new item without any assurance that it will ever be accepted. If it is accepted, he might be on his way to a fortune; but if it is not accepted, his substance as well as his hopes are shattered. His hopes are shattered because he made an erroneous judgment of consumer demand. There is no political agency here to back up the producer's choice or to compensate him for his losses when he has misjudged the consumer. He is left to the mercies of the free market; and as long as consumers are left free, they are a tough lot. They will not reward a producer for having exhausted his substance on a product the consumer doesn't want. If the would-be producer who has made the wrong estimate of consumer demand is to remain an entrepreneur of any kind, he is forced by the market processes to change his plans, make a new evaluation of consumer wishes, and try again. The significant thing is that it is the consumer himself, not a political commissar that must be satisfied.

33. v. Kellogg, 77 U.S. (10 Wall) 383 (1870); State ex. rel. Jones Store Co. v. Shain, 352 Mo. 630,179 WILLISTON, CONTRACTS sec. 926 (3d ed. 1963).

32 https://consumer.findlaw.com/consum-er-transactions/what-does-caveat-emptor-mean-.html, access on 7/12/2020, 8:56am

5.7 Consumer Control or Political?

The choice between a caveat emptor, free market system and a consumer protection system is a matter of deciding whether the productive processes should be under consumer control or political control. If the goal is to satisfy the consumer, the answer in favor of consumer control is clear-cut. And that means the choice is in favor of the free market. Under that system, no product can find favor in the market place without consumer approval. Neither can any product be denied favor if it has consumer approval. And the only law needed to create an atmosphere in which the free market will operate is a law to enforce contracts between willing buyers and willing sellers.

5.8 Consumer Power

The answer to each of these questions and many similar ones that could be asked is that the consumer has the same quiet, but deadly effective, control over the established producer that he is capable of exercising over the newcomer. In this particular arena of human action, the lowest paid wage earner is by no means helpless even in the land of the giants so long as he is free to make his own decisions as to what goods he will buy or refrain from buying.

5.9 Attracting Competitors

The answer is easy. If the performance of the established firm is as nearly perfect as what is here described, you can be sure that it has or soon will have a favorable profit margin. The more favorable that profit margin becomes, the more likely it is that would-be competitors will be watching for an opportunity to enter the field. That opportunity will not occur until some prospective competitor is able to offer a comparable product at a reduced price or an improved product without substantially increasing the price.

As the profit margin improves, the efforts of prospective competitors will increase both in numbers and in diligence of effort. The competition becomes a race among giants to see which one can bring the greatest satisfaction to the individual, low- income wage earner at the lowest price. It is the kind of race that is impossible except in a free market. It is also the kind of race that is inevitable in the free market. It is a race to see who can be first with a solution to the problem of giving the consumer better service at a lower cost. Under the kind of pressure such a race is certain to generate, somebody is sure to find a solution if a solution exists. And as soon as it is found, the fickleness of customers is such that many of then will abandon their first love and flock to the new.

5.10 The Best Government Lets the Consumer Choose

The greatest contribution the government can make toward protecting the consumer is to quit trying to make his decisions for him and leave him free to make decisions for himself. Let him examine each article he is contemplating buying and act on his own judgment. Consumer choices will then be accurately reflected in the market place. In that kind of a market, only those producers who accurately respond to consumer demand and who operate with efficiency will survive. Those who are inefficient or who misjudge the market signals will fail. And from the consumer's viewpoint, it is as important that some businesses be allowed to fail as it is that others be allowed to prosper. The important thing is that in the caveat emptor, free market system, the authority to control which ones fail and which ones survive is determined by the consumer rather than the politician. Caveat emptor then becomes the consumer's true badge of authority. With that badge the consumer can dictate what goods will be produced, in what quantities, and at what prices.

33. https://www.geneseo.edu/~stone/perloff3.pd
34.https://www.google.com/search?client=firefox-b-d&q=1+The+Best+Govnument+Lets+the+Consumer+Choose&spell=1&sa=X&ved=2ahUKEwj-To62qtbztAhXC_XMBHSs9AVE-QBSgaegQIBBAt&bih=1366&bih=654
35. NASIR S 2013-Journal of Business Management-Volume 5.(20) PP.5759

CHAPTER SIX

CONSUMER RIGHT'S IN BANGLADESH

6.1 Introduction

In this age of consumerism the free market economy postulates that, the "consumers are the king" but In realism they are the silent victims of manipulated market forces in a country. In developed economies the consumers are protected to a little extent However, in an economy like Bangladesh where quality fails to recreation the key role, it is the consumer who suffers the most. Long-drawn non-existence of an identifiable consumer protection law in this country has triggered the sufferings more (Independence has fallen in 50 years, but consumer rights are still expressed in Bangladesh in a special way The issue of consumer protection in Bangladesh has been broadly came in the discussion in the recent past and as a result of that, the Consumers' Rights Protection Act (CRPA), 2009 was enacted. Although the government and different other stakeholders acknowledges that the issue is of critical importance, but like lots of other developing countries the benefits of the consumers in this country are chiefly ignored. There is only one major consumer advocacy organization in Bangladesh called the CAB (Consumer Association of Bangladesh). Many developed countries around the world value consumer rights and therefore respect the situation described above in Bangladesh as a child. The global business environment is changing and growing rapidly. The current business climate has been changed by interest groups through various negotiations and treaties, in particular from the General Agreement on Tariffs and Trade (GATT) to the World Trade Organization (WTO) system an evolving global business environment is changing not only systems and processes, but the way we conduct business and transactions, causing deprivation and confusion among consumers. In an ever-evolving sense, consumers are highly respected. But in Bangladesh, we see consumers being ignored. Consumers' rights are violated in almost all sectors of Bangladesh

6.2 Who is a Consumer?

Consumer" means any individual who in relation to a commercial practice is acting for purposes which are outside his business. According to section-2 (19) of the Consumers' Rights Protection Act (2009) in Bangladesh states the definition of consumer as follow.

"Consumer" means such type of person:

(a) Who, without resale or commercial purpose-
(1) Buys any goods for a consideration which has been paid or promised to be paid;
(ii) Buys any goods for a consideration which has been partly paid and partly promised; or basis;
(iii) Buys any goods for a consideration under any system of deferred payment or installment
(b) Who uses any goods bought under clause (a) with the consent of the buyer;
(c) Who buys any goods and uses it commercially for the purpose of earning his livelihood by means of self-employment:
(d) Who-
(1) Hires or in any other means avails of any service for a consideration which has been paid or promised to be paid; or

(ii) Hires or in any other means avails of any service for a consideration which has been partly paid and partly promised; or

(iii) Hires or in any other means avails of any service for a consideration under any system of deferred payment or installment basis, or

(e) Who enjoys any service under clause (d), with the consent of the person who hires or avails it"

Although it may be difficult for a seller to decide whether a purchaser is a consumer or not-it depends on the purchaser's intention in buying the goods for him. It is said that consumer protection is the achieved or intended result of consumer policy.

6.3 Consumer's Rights?

Though not generally recognized because of the openly attitudes of the traders, every consumer, which generally means every person in the society and the citizens who buy products not for any promote commercial use but for ultimate consumption, have some rights of their own (Tami, 2016). Those rights are protected by the state through some specific laws, rules and regulations and are called Consumer Rights (Tami, 2016). To be more specific, there are eight consumer rights which are defined by the UN Consumer Bill of Right (United Nations Guidelines for Consumer Protection, 1985):

a) Right to Safety-safeguarding against the goods that are hazardous to life and property.

b) Right to Information- consumers have the right to be informed regarding the price, quality, quantity, etc., of the products they buy.

c) Right to Choice- consumers should be provided with a wide variety of good to choose from.

d) Right to be Heard-right of consumers to have their complaints heard.

e) Right to Satisfaction of Basic Needs- this right demands that people have access to basic, essential goods and services: adequate food, clothing, shelter, health care, education, public utilities, water and sanitation.

1) Right to Redress-consumers have the right to seek redress regarding their complaints.

g) Right to Consumer Education- the right of consumers to be educated about their rights.

h) Right to Healthy Environment- this is the right to live and work in an environment that is non-threatening to the well-being of present and future generations.

6.4 What is Consumer Rights Protection?

In a welfare state, some laws, rules and regulations are enacted to protect the people from anti-consumer rights practices. Those laws, rules and regulations are collectively called as Consumer Rights Protection. This definition is quite simple, but it also creates another question in our minds, what kind of activities can be called the anti-consumer rights practices exactly?

For that, it has been clarified in the section 2(20) of the Consumers' Rights Protection Act (2009) as given below:

"anti-consumer rights practices" means-

(a) to sell or offer to sell any goods, medicine or service at a higher price than the fixed price under any law for the time being in force;

(b) to sell or offer to sell adulterated goods or medicine knowingly;

(c) to sell or offer to sell any goods containing any ingredient which is extremely injurious to human health and the mixing of which with any food item is prohibited under any law for the time being in force;

(d) to deceive consumers by untrue or false advertisement with the purpose of selling any goods or service;

(e) not to sell or deliver properly any goods or services sold and promised in consideration of money;

(f) to sell or deliver less than the offered weight to the consumers while delivering or selling any goods;

(g) if the weight stone or any other weight measuring instrument used for measuring weight in selling or delivering goods shows more than the actual weight;

(h) to sell or deliver less than the offered amount while delivering or selling any goods,

(i) if the length measuring gauge or anything else used for measuring length in selling or delivering goods shows more than the actual length;

(j) to make or manufacture any fake goods or medicine;

(k) to sell or offer to sell goods or medicine the date of which has expired;

(1) To do an act which may endanger life or security of the consumer and which is prohibited by any law for the time being in force.

In short, anti-consumer rights practices mean all the activities which deprive a citizen of exercising his rights as a consumer.

6.5 Legal Regime of Consumer Rights protection in Bangladesh

Consumer protection in broader meaning includes the laws and policy and their implementation mechanisms to guarantee fair interaction between the consumer and the manufacturers and the service providers (Rahman, 1994). According the articles 15 and 18 of the Constitution of People's Republic of Bangladesh (1972) ensured the rights of consumers, without via or referring to the tenure itself contained by the area of citizens' general rights. Article 15 states that the right to food security is n fundamental principle of public policy for sustainable livelihoods. Article 18 states that public order must promote public health and nutrition and prevent the abuse of drinks and drug addiction. However, these two provisions are part of the basic principles of public order and therefore do not have legal force as fundamental rights in court. There is a more liberal view of our higher justice in public interest litigation, in which the court believes that some basic social order may apply to the interpretation of "victim", but does not provide clear guidance on both issues (Nawaz, 2020). In Bangladesh these two provisions supporting consumer protection are rarely applied, but this is a supreme article. The Government has enacted the Consumers' Rights Protection Act, 2009 to protect the rights of the consumers. A consumer is entitled to lodge complaint with the Consumer Rights Protection Department for any violation of the Act. The Deputy Commissioners of the districts can exercise the same power as given to the department. A consumer although barred from filing a direct complaint to the police station under the Consumers' Rights Protection Act, 2009 can file a case to the Police Station under other Laws. Different organizations are established in Bangladesh to protect the rights of

the consumers including various Courts or Tribunals such as (1) Consumer Rights Protection Department; (ii) National Consumer Rights Protection Council; (iii) Special Tribunal; (iv) Mobile Court (can work/ function under various Laws; it may be constituted by a special executive order), (V) Drug Court; (vi) Food Special Court; (vii) Ordinary Criminal Courts; (viii) Ordinary Civil Courtis; (ix) Marine Courts; (x) BSTI; (xi) Claims Tribunal etc.

6.6 Challenges of the Consumer Right's Protection Law in Bangladesh

Currently, in Bangladesh majority of the consumers are facing a number of specific problems, some of them are: adulteration, product inconsistent with price, deceptive advertising, deceptive packaging and branding, false information about goods and services, cheating in weights & measures, false date, fraudulent production process and selling etc. (Hider, 2017). Overlapping of the laws is a problem for Bangladesh to implement measures against criminality associated with violation of consumer rights (Huq & et al., 2017). Different Laws on the same subject, different types of punishment for the same offence under different Laws, court fees for filing a suit for compensation, delay in proceedings. investigation procedure left to the police instead of independent authorities, lack of monitoring mechanism have been observed by experts as potential impediments to enforcement. On the other hand, there are some controversial and conventional laws in existence in our country. These laws are so outdated that little or no protection is provided to the consumer's interests (Islam & et al., 2016) and most of laws relating the consumer rights protection do not follow the international standards in terms of dispute resolution (Hossain, 2019). The basic problems of the existing consumer rights protection laws in Bangladesh. Evident from investigation the following problems are as follows:

(A) Consumers' Illiteracy or Limited Knowledge about Consumer Right

Consumer rights are the part of right to life. But in Bangladesh, a great number of consumers are poor, illiterate and have not had ample knowledge about their rights as a consumer. Bangladesh has a number of laws, relevant organizations like the Consumer Association of Bangladesh (CAB) for the promotion of consumer rights and the protection of consumers. But most of the times this enacted laws' and concerned organization's support have not reached to the consumers because majority of the consumers themselves are not aware of their rights. These unawareness and ignorance have limited consumers capabilities to protect their rights and to raise voice over the dishonest businessmen who have exploited them over the years (Islam et al., 2016). Again, corporate attitude and actions are relatively less concerned about the consumers and the pressure arising from the consumer movement is generally low (Quazi, 2002). If the consumers of Bangladesh have fully understood and exercised their rights in a full swing, then consumerism will have got greater acceptance in Bangladesh.

(B) Administrative Nature

Most of the laws are enacted to deal consumers rights in Bangladesh and particularly the Consumers' Rights Protection Act, 2009 are administrative matters in nature. The Act has 82 sections of which 78 (without sections 1-4) deals with the composition of the National Consumers Rights protection Council and the Directorate of National Consumer Rights Protection. Several state organs in Bangladesh which take action for offences that committed under this Act involves the Consumer Rights Protection Department, the National Consumer Protection Council formed under the Act, several mobile courts, the Drug Control Court, the Food Special Court, the ordinary Criminal Courts, the ordinary Civil Courts, the Marine Courts and Claims Tribunal etc. The Act also enjoins different ministries of the

Government against the production of products services that are likely to threaten imminent danger to Gife and environment. The Act also directs that the manufacturers of products and services needs to be followed by several inspection agents by respective ministries to guarantee the quality and safety of the products and services. Under Chapter II of the Act, it as well as prescribes for a specialized institution namely National Consumers' Right Protection Council to be in incriminate of fraud repression and inspections of imported and exported goods. The formation of National Consumers Rights Protection Council is no doubt a good step but the Act can hardly be termed as a citizens guidelines for consumer protection laws, cause it does not outline their rights and it does not explain the way of how the citizens can empower themselves to make certain their rights as a consumer in this country (Arefin & et al., 2020).

(C) Time Constraint

Time constraint for lodging a complaint is another most important shortcomings of the consumer's. Complainants have to lodge complaint within 30 days of date of occurrences (The Consumers' Rights Protection Act 2009, s.60). However in India, the time perimeter for filing a complaint is two years. (Consumer Protection Act 2019, s.69) matter of the issue of unawareness, 30 days' time limit certainly be lapse and this would prevent the access to justice. In view of such analysis, the time limit for filing a complaint supposed to be extended (Rights & Shamim, 2016).

(D) Limitation of filing Criminal Case

An aggrieved (consumer) cannot file a case directly before the Magistrates court to initiate a criminal proceeding (The Consumers' Rights Protection Act 2009, s. 71(1)). All cases belongings under this rule get to be filed to the Director universal or any officeholder empowered by the District Magistrate The Consumers Rights Protection Act 2009, s. 71(2)). However, the Director General of Directorate of National Consumer Rights Protection in an interview has defended the perception by stating that if condition arises, the case will be forwarded to the court of judicial Magistrate on priority bas

(E) Limited Jurisdiction

The Directorate of National Consumer Rights Protection has the jurisdiction to entertain complaints while the value of the goods or services and the compensation, if any, claimed does not exceed 200,000 BDT (The Consumers Rights Protection Act 2009, sec. 37-55). Greater jurisdiction means the quasi-judicial body can fear more complaints as a result ensuring better and wider protection. This mechanism reduces burden from the court and provides consumers with quick affordable access to justice.

(F) Hearing Procedure

An alternative critique of the Act is the need of provision of procedural steps which is to be followed by the Directorate of National Consumer Rights Protection on receipt of complaints. The procedure has separated among complaints of goods and service. The Act has given the quasi-judicial body the recognition of a civil court during such hearings also. Such elaborate description brings precision and understanding of the system. In consequence such an inclusion of procedural steps and recognition of the Directorate of National Consumer Rights Protection with the powers of a civil court (for the procedural purpose), in the CRPA 2009 is essential to establish faimess, understanding and

transparency of procedure.

(G) Limited Remedy

Here is moreover space for expanding the administrative remedies available to the Directorate of National Consumer Rights Protection. Under CRPA, the Directorate of National Consumer Rights Protection can impose fine only if the consumer's complaint is proved during hearing (The Consumers' Rights Protection Act 2009, s.76). The maximum fine which can be imposed is 200,000 BDT (ibid, chapter IV) and the consumer is entitled to 25% of the realized fine (The Consumers Rights Protection Act 2009, s.76). In this view, the remedial power of the Director General supposed to be elaborated to better safeguard the consumers' needs (Rights & Shamim, 2016).

(H) Narrow Definition of Anti-Consumer Right Practice

A further drawback of the Act is the inadequate scope of application. The CRPA has defined 12 conducts to be anti-consumer (The Consumers' Rights Protection Act 2009, s.2 (20)). However the characterization is narrow in scope. For instance, the section does not contain any provision for restrictive trade practice. It did not include lots of aspects of unfair trade practice too, like as false representation of goods and service, false representation of warranty and guarantee and all that to be anti-consumer. There is a short of provision for maintenance of quality of all goods and service also.

(1) Narrow Definition of Service

The ambit of protection of rights to service covered under the 2009 Act is furthermore questionable. Service has been defined in the Act to include "transport, telecommunication, water supply, drainage, fuel, gas, electricity, construction, residential hotel and restaurant and health services, that is made available to its users in exchange of price but does not contain the services rendered free of cost" (The Consumers Rights Protection Act 2009, s.22). This assessment illustrates the narrow demarcation of service in the CRPA. The characterization missed common areas of service such as, banking, financing, insurance, processing, housing, entertainment, amusement, purveying of news or other information, etc. Thus the scope of service must be expanded to guarantee better security of consumers.

(J) Limitation Regarding Public Health Care Service

Alike to the above provision, under the CRPA 2009, the Directorate of National Consumer Rights Protection is capable of inspect and discover defects in private health care service but cannot contain any remedial measures against them. Directorate of National Consumer Rights Protection can simply put the matter to the Secretary of Ministry of Health and Director General of Department of Health (The Consumers Rights Protection Act 2009, s.73)). This limitation makes the process complex and may give rise to criticisms of lack of transparency of procedure and restriction of access to justice also. Therefore this restrictive provision in the 2009 Act supposed to be reviewed in light of ensuring successful consumer protection.

(K) Limitation regarding Adulterated or Fake Medicine

A further blemish of the law is that it does not allow the Directorate of National Consumer Rights

Protection to file a lawsuit against adulterated or fake medicine, though DNCRP has the power and responsibility to inspect and discover adulteration or fake medicines. In that situation, lawsuit may be filed under s. 25C of the Special Powers Act 1(974). Therefore the restriction imposed in the 2009 Act makes the process complex and may deter affordable and quick access to justice in such situations

6.7 Shortcomings of the Consumer Rights Protection Act (CRPA), 2009

THE CONSUMER RIGHTS PROTECTION ACT (CRPA), 2009 does not follow the international standards in terms of dispute resolution. It does not provide for any quasi-judicial dispute resolution system for resolution of consumers' complaints. Most of the international consumer laws allow to receive complaints directly from the consumers, but the CRPA, 2009 does not allow direct complaints to be received from the consumers rather it mandates the endorsement of the Director General of the Consumer Rights Protection Department (CRPD) in this regard.

As per the CRPA, the usual trial procedure will be followed in redressing the issues arising out of the violation of the CRPA. The usual trial procedure proved to be time consuming and more complex as well as multifarious. Most of the countries follow a trial system in this respect which is quite unique, special and simple as well as totally different from the traditional trial system. The CRPA, 2009 should be amended for the purpose of fair protection of the consumer rights.

6**.8 Recommended action plan to Protect Consumer Right**

Government should set a vision with respect to assurance of consumer rights, Government ought to
indicate the timeline within which it will build the consciousness of the consumer with respect to their rights to a specific level and diminish the unlawful strategic policies under a specific level. Government should make some reasonable action plans to set up consumer rights in our country. The present study suggest the accompanying activity plans:

(**A) Awareness Building Action Plan**

a) To expand the awareness with the consumers and to fabricate customer conclusions, consumer awareness rising promoting should be done forcefully in all TV stations and papers,
b) To arrange seminar, discussion, rallies, and other awareness building programs in each area of Bangladesh in collaboration with the Government agency and Consumer Association of Bangladesh (CAB);
c) To advance consumer education, a different chapter on consumer rights should be included in the curriculum of Secondary and Higher Secondary level of education;
d) To frame Consumer Activist Group in each district and incorporate individuals from each Thana and Upazila in the group.

(B) Legislative Based Action Plan

a) To enact a law with all provisions to promote and secure the rights of a consumer and audit the old and outdated consumer related laws;

b) To make a change in the provisions of Consumer Protection Act, 2009 to annihilate court fees for filing a suit by an aggrieved consumer.

(C) Infrastructure Developments

a) BSTI should be modernized with new lab instruments and qualified individuals;
b) To test and give permit locally manufactured and sold things, there need to have a quality and standard testing lab in each region (within municipal office) to test the norm of locally manufactured items;

c) To set up the Office of Directorate General (DG) at each district in Bangladesh, as early as could be expected under the circumstances, at available and visible location, as the aggrieved consumers can undoubtedly access to the DG to file complaint;

d) To introduce an electronic complaint management system should be created to get the complaints from the consumers.

(D) Law Enforcing Team Development

a) To arrange activities of District Consumer Rights Protection Committee and to monitor the advancement toward protection of consumer rights, Divisional Consumer Rights Protection Office should be set up at each division of our country, where the district committees will meet, assess their activities and set next course of action;

b) To quit sneaking, to keep safe the local industries and the consumers, a vigilant team should be framed for spot checking of the snuck things in the market and take fast reformatory measures against the illegal traders

CHAPTER SEVEN

FINDING, RECOMMENDATION AND CONCLUSION

7.1 Finding

In common law, under the doctrine of caveat emptor the seller is only under a duty to allow the buyer to inspect the goods himself and nothing more. And the buyer may exercise his options.

1. Under common law, the buyer has no remedy where option of inspection was givento him before sale; but under Islamic principle the buyer may annul the contract even after conclusion of sale if he finds the goods defective.

2. Under common law, the buyer is personally liable for his careless or unskilled judgment: but under the Islamic doctrine after completion of sale, if it appears that the goods is defective or it is not suitable for buyer's purpose, he may get compensation.

3. It is common in both common and Islamic law that the seller will give a chance to buyer to examine the goods before sale. To this effect that if any one sells a defective article without drawing attention to it, the seller will remain under Allah's anger or the angels will continue to curse him.

4. In common law under section 4 of The Sale of Goods Act, 1930 in a sale the ownership is transferred immediately, so the buyer cannot return the goods or claim any damages if any stipulation was not given; but in Islamic law the buyer has the option. Both the seller and the buyer have the option of cancelling and confirming a bargain unless they separate or the sale is optional.

7.2 Recommendation

The principle that the buyer alone is responsible for checking the quality and suitability of goods before a purchase is made, the phrase is Latin and means, 'let the buyer beware
In numerous world countries, buyers appreciate immense securities that are moderately new on the scene. The fast ascent in purchaser protectionism, for what reason do these endeavors shift from nation to nation. Key ideas include:
Until the point that the 1960s, purchasers delighted in couple of administrative insurances from flawed items. The United States drove the change.
Shopper assurances, which change in extension and expectation from nation to nation, impact item outline. Germans support quality; the French, development.
Purchaser's advantage from these assurances, yet as a major aspect of a bigger pattern toward modernization, something in the social texture is lost.
Control will be required, since without it, as the deliberate take-up of the Law Society Convincing Protocol, or rather absence of it has appeared, and any expectation of change will essentially not emerge. The constrained accomplishment of the Home Information Pack exhibited that you have to order and force necessities to achieve change, and to ensure it is actualized in a uniform and strict way.
Any change will require all inclusive help from all partners, and take a frame which isn't too twisted with the present procedure, proposition, and is that idea ought to be given to turning around the lawful premise on which the offer of a property happens.
This depends on the rule 'proviso emptor. This implies the purchaser needs to make examinations about the property before trading contracts to buy. Extensively this is on the premise that, subject to specific exemptions, the purchaser will take the property subject to issues that he didn't think about, on the off chance that he neglected to pursuit or make enquiry.

7,3 Conclusion

The modem trend to protect consumer's right has minimized the importance of rule of caveat emptor because the rule was originated at a time when the goods were mostly sold in market overtly and the buyer, therefore, had every opportunity to inspect as to the quality of the goods. At present time most of articles are packed and sealed by producer but still the buyer can examine the packed goods, their descriptions shown on the cover, expire date, brand, logo etc. Regarding the sale of defective goods the buyer has some remedies against the default seller in both common law and Islamic law. In common law it is known as "Caveat Emptor" (Buyer be aware). It is the general rule that the buyer should have an opportunity to satisfy himself as to the quality of the goods for his particular purpose and in absence of any query or unskilled test by the buyer, the seller is not to be liable for anything. Caveat emptor included choice, option or exercise of power of choice, refusal or right of withdrawal. In common law, under the doctrine of caveat emptor the seller is only under a duty to allow the buyer to inspect the goods himself and nothing more. The rule of the caveat emptor applies whenever the buyer voluntarily chooses what he/she buys, it does not mean that the buyer should take chance but it means he/she should take care if both the buyer and the seller are negotiating from equal bargaining positions.

8.1 Bibliography

1. Sale of Goods Act 1930
2. Consumer Protection Act 1986
3. In English, Sale of Goods Act 1993
4. Gaorav Tiwari-Business Law (25-Dcember-2018)-Topper Publisher
5. Abdul Malek, Anju Man Ara Begum, Kazi Arshadul Hoque, Doctrine of "Caveat Emptor" (Buyer be aware) in Common Law and the Doctrine of "Khiyar al aib" (Option of defect) in Islamic Law: A Comparative Study, ISSN 1813-7733 Vol-10 & 11. December 2014
5.LLM 2nd year student, Modern law College, Ganeshkh-ind, Pune
6. Walton H. Hamilton, the ancient maxim caveat emptor, 40 Yale L.J. (1931).
7.NASIR S 2013-Journal of Business Management-Volume 5.(20) PP.5759
8.BSCL, Business Standard, (27-january-2013)
9. Foundation for Economic Education, (01-june-1975)
10.Drumar Mining Co. v. Morris Ravine Mining Co., 33 Cal. App.2d 492, 92 P.2d 424 (1939): McConnell v. Jones, 228 N.C. 218, 44 S.E.2d 876 (1947).
11. Barnard v. Kellogg, 77 U.S. (10 Wall) 383 (1870); State ex. rel. Jones Store Co. v. Shain, 352 Mo. 630, 179 S.W.2d 19 (1944)
12. WILLISTON, CONTRACTS sec. 926 (3d ed. 1963).
13. Verma ayush. Ipleader, (26-february-2020)
14. Mane. Rakhi, Modern law college, issn no 2348-4950
15. Guest bpost, ip law and prosecution, (11-february-2016)
16. Kushal MC and vivek kuchal business legidlelafion For management, vikas publishing.
17. BSCAL business standard, (27-january-2013)
18. A. stark, whats the matter with business ethics, Harvard publishing, (may-june, 1993)
19. RC Boumhart, Harvard business review, july-august, 1961)

8.2 List of website

1. https://www.toppt.com/guides/business-laws/the-sale-of-goods-act-1930/doctrine-of-caveat-emptor/
2.Available at,
https://www.mondaq.com/italy/x/40206/Arbitration+Dispute+Resolution/From+Caveat+Emp-tor+to+Caveat+Venditor+a+Brief+History+of+En-glish+Sale

3. https://consumer.findlaw.com/consum-er-transactions/what-does-caveat-emptor-mean-html,access on 7/12/2020,8:56am
4. https://www.drishtiias.com/upsc-ex-am-ga-resources-PRINCIPLE-OF-CAVEAT-EMP-TOR-AND-CAVEAT-VENDITOR,
5. https://legaldictionary.net/caveat-emp-tor
6. https://blog.ipleaders.in/doctrine-of-caveat-emptor
7. file:///C:/Users/USER/AppData/Local/Temp/31-Article-Text-27-1-10-20190918.pdf
8. file:///C:/Users/USER/AppData/Local/Temp/47.pdf
9. https://www.business-standard.com/article/specials/buyer-beware-are-marketing-and-advertising-always-ethical-197010301012-1.html?fbclid=1wAR3W11x58TcRH7vPGIQ1RQt1cm8bEeFtcUTJO9dGYN-L8KTCiegQ3EWSy9g
10. https://fee.org/articles/caveat-emptor-the-consumers-badge-of-authority/2fbelid-IwARIZHT-YEDd6KkO3CpIEX28H5zgl-Trez4aYZISOA-L33HPIZFyCRDdivSc
11. file:///C:/Users/USER/AppData/Local/Temp/27436-Article%20Text-98901-1-10-20160420-6.pdf

12.https://topper.com/guides/business-laww/the-sale-of-goods-act-1930/rughts-of-emplseller-against-buyer
13.https://scholarship.law.comell.edu/cgi/viewcontent.cai?article=1174&context-historical_theses
14. https://www.soppr.com/guides/business-law/the-sale-of-goods-act-1930/express- and-implied_warranties/
15. https://www.toppr.com/guides/business-laws/the-sale-of-goods-act-1930/express-and-implied-conditions